

REMARKS

In the advisory action, the Examiner stated that the previously submitted Declaration under 37 CFR 1.131 did not place the application in condition for allowance because:

“--- (a) Declaration labeled serial no. 09/974,302 (US 2002/0090488) rather than the instant application no. 10/059,278.

(b) Section II of Declaration discusses claims 115 and 116 of application 09/974,302. Said application (i.e., reference) has only claims 198 filed therein and allowed.

(c) The scope of declaration is not commensurate in scope with the presently claimed invention. Note MPEP 715.02.

(d) A declaration under 1.131 must be made by the named inventors of the present application. Kurth is not an inventor of the present application. Note MPEP 715.04, I.

(e) No documentary evidence of the facts have been submitted with the declaration. Note MPEP 715.07, I, III.

(f) The date to swear behind is the effective filing date of the Kurth reference 2002/0090488, which is October 10, 2000, as noted in at least the Final Rejection of 09/08/04, paragraph spanning pages 4-5---”.

Applicants submit herewith an appropriate Declaration under 37 CFR 1.131 which does not suffer from the deficiencies listed above and which properly shows that applicants “established the invention of the subject matter claimed prior to the effective date of the reference. Thus, the attached Declaration under 37 CFR 1.131 is executed by all of the inventors named in the application; is totally commensurate in scope with the

presently claimed invention; swears behind the October 10, 2000 date specified by the Examiner and provides the "documentary evidence of the facts" as required by the Rule.

Inasmuch as applicants have removed the Kurth publication(s) as effective prior art against the present claims, withdrawal of the rejections of record thereagainst that are based on the Kurth reference(s) is respectfully requested.

The grounds of rejection based on double patenting will be addressed upon an indication of allowable subject matter.

Applicants have earnestly endeavored to place the application in condition for allowance and an early action toward that end is respectfully requested.

Should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T2317-907720) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

By: 

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